

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN GERHOLT,	:
Petitioner	:
v.	: Case No. 3:23-cv-125-KAP
JOSEPH TERRA, SUPERINTENDENT,	:
S.C.I. PHOENIX,	:
Respondent	:
(Governor Shapiro and Bedford County	:
District Attorney Offices [sic] incorrectly	:
named additional respondents)	:

Memorandum Order

Movant John Gerholt is an inmate currently at S.C.I. Phoenix serving a life sentence imposed by the Bedford County Court of Common Pleas for the murder of his estranged wife on November 9, 2008. Following state court proceedings, Gerholt filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 at Gerholt v. Link, Case no. 3:17-cv-40-KRG-KAP (W.D.Pa.). That petition was denied in March 2020, and a certificate of appealability was denied *sub nom.* Gerholt v. Superintendent Phoenix SCI, No. 20-1822 (3d Cir. September 25, 2020). There are no other reported federal proceedings.

Gerholt has now filed a motion to proceed *in forma pauperis*, ECF no. 1, and a Motion, ECF no. 2, citing Fed.R.Civ.P 60(b), seeking “TO REOPEN HIS CRIMINAL CASE TO FULLY REVIEW THE FUNDAMENTAL INJUSTICE THAT TRIGGERS THE LEGALITY, VALIDTY, AND CONSTITUTIONALITY INCLUDING BUT NOT LIMITED TO THE DEFENCT COLLOQUY W/SUBSEQUENT IMPOSED LIFE SENTENCE.” (Misspellings, grammatical and semantic errors reproduced as in original. I also note the motion to proceed *ifp* names a different set of respondents that deletes the District Attorney Offices” and names the Commonwealth’s acting Attorney General. The correct respondent is the person with legal custody of petitioner, Superintendent Terra.)

The Clerk docketed the matter as a new proceeding because it can be taken as intended to reopen Gerholt’s state court criminal case, i.e. as a new habeas petition. I think it is better understood as a motion to reopen the habeas proceedings in this court at Gerholt v. Link, Case no. 3:17-cv-40-KRG-KAP (W.D.Pa.). I will file the appropriate Report and Recommendation there.

Accordingly, ECF no. 1 and ECF no.2 are denied: the *ifp* motion is unnecessary and

the Rule 60 motion as administratively closed and to be refiled in the habeas proceeding.

The Clerk shall add the current District Attorney for Bedford County to the docket in this case as counsel for the respondent, for notice purposes only without any duty to respond. The Clerk shall also duplicate the motion at ECF no. 2, with the Exhibits at ECF no. 1-1, 1-2, and 1-3, and file that as a Motion to Vacate the Judgment with supporting exhibits in Gerholt v. Link, Case no. 3:17-cv-40-KRG-KAP (W.D.Pa.).

The Clerk shall then mark this matter closed.



DATE: June 20, 2023

Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

John L. Gerholt, Sr. KR-8142
S.C.I. Phoenix
1200 Mokychic Drive
Collegeville, PA 19426